IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 378 of 1999
LETTERS PATENT APPEAL No 380 of 1999
LETTERS PATENT APPEAL No 381 of 1999 and
LETTERS PATENT APPEAL No 382 of 1999
with
SPECIAL CIVIL APPLICATION No 9730 of 1999
SPECIAL CIVIL APPLICATION No 10521 of 1999
SPECIAL CIVIL APPLICATION No 10522 of 1999
SPECIAL CIVIL APPLICATION No 10523 of 1999
SPECIAL CIVIL APPLICATION No 10524 of 1999
SPECIAL CIVIL APPLICATION No 9840 of 1999
SPECIAL CIVIL APPLICATION No 477 of 2000
SPECIAL CIVIL APPLICATION No 9455 of 1999 and
SPECIAL CIVIL APPLICATION No 9548 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G. K. PARMAR

Versus

STATE OF GUJARAT AND ORS.

Appearance:
LETTERS PATENT APPEAL Nos. 378, 380 and 381 of 1999

TANNA ASSOCIATES for Appellants
MR SP HASURKAR, ADDL. GOVERNMENT PLEADER and SOLICITOR with MS MANISHA LAVKUMAR for Respondents

SPECIAL CIVIL APPLICATION Nos. 9730/1999, 10521/1999, 10522/1999, 10523/1999 & 10524/1999
MR MUKUL SINHA for Petitioners
MR SP HASURKAR, AGP with MS MANISHA LAVKUMAR for Respondents

LETTERS PATENT APPEAL No 382 of 1999
MR GM JOSHI for Appellant
MR SP HASURKAR, ADDL. GOVERNMENT PLEADER and SOLICITOR with MS MANISHA LAVKUMAR for Respondents

SPECIAL CIVIL APPLICATION Nos. 9840/1999, 477/2000, 9455/1999 & 9548/1999
GIRISH PATEL ASSOCIATES for Petitioners
MR SP HASURKAR, AGP with MS MANISHA LAVKUMAR for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 10/05/2000

ORAL JUDGEMENT

(Per: R.K. Abichandani, J.)

This group of matters raises common points and have been argued together. The question involved is whether the appellants and the petitioners who were originally recruited as Constables in various branches of the Police Force and were transferred to the Intelligence Bureau of the Police Force on various dates, acquired a right to continue in the Intelligence Bureau and therefore could not be reverted to their original posts in various branches of the Police Force where they were initially recruited.

2. The appellants of the group of the Letters Patent Appeals had filed petitions challenging the orders of their repatriation from the Intelligence Bureau. That group of petitions came up for hearing before the Learned Single Judge (Honourable Miss Justice R.M. Doshit) and by order dated 18th March, 1999 which has been challenged in this Application, the Learned Single Judge rejected the petitions by holding that in view of the clear

stipulations made in the orders by which they were transferred to the Intelligence Bureau, all these employees were working in the Intelligence Bureau on deputation and had no right to challenge their repatriation to the parent cadres in their respective districts and units. In the other petitions which were filed by similar employees, the matters were referred to the Division Bench in view of the Appeals preferred against the said decision dated 18th March, 1999 and were ordered to be heard with the Letters Patent Appeals. That is how all the matters were clubbed together for a common hearing.

3. In all the matters, the employees have challenged their repatriation on the ground that they were entitled to continue in the Intelligence Bureau and should be treated as if they are absorbed therein.

3.1 The claim of these employees was that they were appointed in the Intelligence Bureau after being selected at written and oral tests. Upon their appointment in the Intelligence Bureau, they were posted on the post equivalent to the post which was next higher to the one held by them in the parent branch. According to these employees, their promotion and transfer to the Intelligence Bureau was as per the relevant Recruitment Rules and should be treated as a permanent appointment.

3.2 The case of the respondent authorities was that having regard to the setup of the Intelligence Bureau, these were only temporary transfers for a period of three years which was mentioned in the orders, as per the policy laid down in the Government Resolution dated 3rd November, 1990. The one step higher post was given only with a view to provide incentive to those who were serving in the Police Force for joining the Intelligence Bureau and it was made clear at the time of their transfer that they did not thereby acquire any right in the Intelligence Bureau and that such promotion which was given by way of incentive was to be treated only as a fortuitous one.

3.3 The Learned Single Judge while holding that the Recruitment Rules which were subsequently framed after the Resolution dated 3rd November, 1990 did not contemplate appointment in the Intelligence Bureau by deputation though they provided for transfer of police personnel from other branches of the State Police Service namely, Armed Branch, Unarmed Branch or Wireless Branch by internal promotion and by direct selection, found that it was necessary to examine the nature of their

appointments in order to ascertain whether they were transferred on permanent basis, as envisaged in the Recruitment Rules or whether they were transferred on deputation basis in light of the Resolution dated 3rd November, 1990. The Learned Single Judge came to the conclusion that the transfers of these persons to the Intelligence Bureau were of a temporary nature, being for a period of three years, and that, one step promotion offered to them was also limited to the period for which they served in the Intelligence Bureau. It was held that these employees were bound by the terms and conditions of their appointment and their repatriation to their parent post whether on the ground of unsuitability or for retirement or on completion of the initial period was in consonance with the terms of their appointment and that they had no right to continue in the Intelligence Bureau on permanent basis. The Learned Single Judge relied upon the decision of the Supreme Court in State of Punjab and Others vs. Inder Singh and Others reported in 1997 (8) SCC 372 in which it was held that after the expiry of the period of deputation, the employee has to come back to his parent Department and occupy the same position unless, in the meanwhile, he has earned promotion in the parent Department as per the Recruitment Rules. It was held by the learned Single Judge that even if no undertaking was given by some of the employees, the stipulations contained in their orders of transfer to the Intelligence Bureau showed that they were to be on deputation to the Intelligence Bureau and therefore they could not challenge their repatriation.

4. In the group of petitions SCA 9730 of 1999 and SCA 10521 to 10524 of 1999, it was argued that even if the initial order of appointment by transfer of these petitioners was for three years, from that, it could not be inferred that they were placed on deputation. It was submitted that there could not be any deputation where there is a regular selection by holding tests nor could there be any one step promotion when large number of persons are brought on deputation. The concept of giving one step promotion and selecting by holding tests was alien to the concept of deputation. It was contended that even if the initial transfer was made on the basis of the policy reflected in the Resolution dated 3rd November, 1990 on the coming into force of the Recruitment Rules which were contemplated in the Resolution itself, the employees who were continued beyond the period of three years acquired a lien in the posts held by them in the Intelligence Bureau to which they were transferred. It was contended that on reorganisation made under the said Resolution, regular

posts were created in the Intelligence Bureau and it was against such permanent posts that the employees were posted by being drafted from the Police Force. It was also submitted that the so called repatriation, in fact, amounted to punitive termination of the employment of these persons from the Intelligence Bureau and therefore it was incumbent on the respondent authorities to give a hearing to these employees before their appointment in the Intelligence Bureau could be terminated. It was argued that the impugned repatriation had the effect of reducing the emoluments of these employees who were given one step promotion in the Intelligence Bureau. It was contended that after having efficiently served for more than 8 or 9 years, these persons were being shunted out unceremoniously without any rhyme or reason and perhaps at the instance of an officer who had no authority to take any decision on the question of repatriation. It was submitted that when a statement was made on instructions given by that officer before the Division Bench at the admission stage of the Letters Patent Appeal that all others will also be repatriated, these petitioners not being a party to those proceedings could not be held to be bound by such statement. It was submitted that the repatriation of these petitioners was made without any application of mind and just because a query was put by the court in the Letters Patent Appeals at the admission stage as to what was being done about other similar employees. The Learned counsel also referred to the various provisions of the BCSR to point out that there was a concept of suspended lien under Rule 19 and that the petitioners on the completion of three years of service should be treated as having acquired a lien in the post to which they were transferred in the Intelligence Bureau. It was also submitted that the Recruitment Rules which came into force after the Resolution contemplated appointment by transfer and therefore these appointments should be treated as regular appointments to the Intelligence Bureau by transfer of the employees from the Police Force after selecting them by taking written and oral tests. It was also contended that any decision to repatriate them would be irrational even if such persons were to be treated as deputationists.

5. In the group of Letters Patent Appeals in which the order of the Learned Single Judge is challenged, the contention raised by the learned counsel for the appellants was that there was no characteristic of deputation in the appointment of the appellants in the Intelligence Bureau. The process that was adopted for placing them in the Intelligence Bureau was as good as a

selection process for direct recruits. It was argued that these appellants were not paid any deputation allowance and therefore, they cannot be treated as on deputation. According to the learned senior counsel the in-house direct recruits cannot be placed in a worse situation than open market direct recruits. It was also contended that after three years, they acquired "semi permanency" and therefore could not be repatriated. It was also argued that the unceremonious mass repatriation of these employees from the Intelligence Bureau amounted to arbitrary termination from service, for which no procedure was followed.

5.1 The learned Senior counsel relied upon the decision of the Supreme Court in Rajendra Prasad vs. Managing Director, U.P. reported in (1999) 8 SCC 381 in which it was held that where the Rules were framed for absorption in pursuance of a policy of the undertaking then such absorption could not be denied without justifiable reasons. It was held that to absorb or not to absorb a deputationist was a policy matter, but at the same time when the policy was accepted and Rules were framed for such absorption, before rejecting the application, there must be justifiable reasons. Reliance was also placed by the learned counsel on the decision of Supreme Court in Umapati vs. State of Bihar and another reported in (1999) 4 SCC 659 in which it was held that the necessity for sending on deputation arises in public interest to meet the exigencies of public service.

5.2 In one of the Appeals where repatriation was done "in the interest of discipline and better functioning of the intelligence organisation", the contention initially taken by the learned counsel that it amounted to punishment without hearing the appellant was given up. The learned counsel appearing in the group of Letters Patent Appeals assailed the judgment of the Learned Single Judge on similar grounds contending that all the appellants had acquired a right to continue in the post to which they were transferred.

5.3 The learned counsel appearing in other matters adopted the arguments of the learned counsel who preceded them and tried to substantiate the contentions by referring to the Recruitment Rules, the record of their petitions and the aforesaid two Supreme Court decisions. The learned counsel appearing in SCA 9840 of 1999, 477 of 2000, 9455 of 1999 and 9548 of 1999 while adopting the contentions which were raised by the other counsel also submitted that the Recruitment Rules provide for appointment by transfer. He pointed out that in the

Recruitment Rules framed under Section 5 of the Bombay Police Act, 1951 published under the Notification dated 07.12.1991, appointments to the post of Intelligence Officer (equivalent to Police Sub-Inspector) Class III in the State Crime Investigation Department (Intelligence Bureau) of Gujarat State Police Service could be made by transfer of a person from amongst persons working in the cadre of Head Constables Grade I or Grade II or by direct selection. He also pointed out from similar rules for recruitment to the post of Senior Intelligence Officer (equivalent to Police Inspector) that appointment to that post could be made either by transfer of a person working in the cadre of Sub-Inspector in the Gujarat Subordinate Services Class III or by promotion of Intelligence Officer or by direct selection. The learned counsel also pointed out the Recruitment Rules for the post of Assistant Intelligence Officer in which it was provided that the appointment to the post of Assistant Intelligence Officer shall be made by transfer of persons amongst Head Constables Grade II and Constables working in the Gujarat Subordinate Services Class III Police Department to the State Crime Investigation Department (Intelligence Bureau) as mentioned in Rule 2. He submitted that many of the employees were transferred after these Recruitment Rules came into force and therefore their appointment in the Intelligence Bureau should be treated to have been made under the Recruitment Rules on a regular basis.

6. The learned Assistant Government Pleader referred to the appointment orders and affidavits filed on behalf of the Respondents in which it was stated that the Intelligence Bureau has no cadre of its own and officers were posted on transfer on deputation basis. It has been stated in these affidavits that if these employees were continued in CID (Intelligence Bureau) beyond three years, it was only because of the exigencies of work and that in all these cases, the appointment orders clearly stipulated the condition that their postings were purely temporary and one-step promotion was "purely fortuitous" and meant only for the duration of their work in the Intelligence Bureau. It was also stated that these appellants and the petitioners were neither absorbed in the Intelligence Bureau nor was their lien transferred to the Intelligence Bureau. It was pointed out from the various appointment orders (order dated 09.08.1991 appointing 84 Head Constables as Intelligence Bureau Officers, order dated 17.08.1991 appointing 127 Constables as Assistant Intelligence Officers and order dated 05.09.1991 posting 98 Constables as Assistant Intelligence Officers) that in all these orders there was

a clear mention of their postings being made pursuant to the aforesaid Government Resolution dated 3rd November, 1990 on a temporary basis for three years. It was therefore submitted that as per the terms and conditions of their postings in the Intelligence Bureau, none of these transferees could be treated as a permanent recruit in the Intelligence Bureau under the Rules. The learned counsel placed reliance on the following decisions of the Supreme Court in support of her contentions:-

(a) State of Punjab vs. Inder Singh reported in 1997 (8) SCC 372 was cited for the proposition that the concept of deputation means deputing or transferring an employee to a post outside his cadre i.e. to say, to another Department on a temporary basis and that after the expiry of such period, the employee has to come back to his parent Department to occupy the same position unless in the meanwhile he has earned promotion in his parent Department as per the Recruitment Rules. In that case, the respondents who were appointed as Constables in the Punjab Police were taken on deputation to CID of the Punjab Police. While on deputation, they had earned adhoc promotions and after a long time they were sought to be repatriated to their parent cadres as Constables or Head Constables depending upon their postings in the parent cadres. Contentions similar to those which are raised in the present group of matters were raised before the Supreme Court and the Supreme Court held that there was no escape for the respondents from going back to their parent departments and working there as Constables or Head Constables.

(b) Bhagwati Prasad vs. State of Gujarat reported in 1979 (2) SLR 551 was cited for the proposition that with consent, the employee can be deputed to any Department or any cadre or at other places of service.

(c) Sohan Singh vs. State of Punjab and Haryana, a decision of the Full Bench of the Punjab and Haryana High Court reported in AIR 1970 P&H 322 was cited for the proposition that no contract comes into being between the State Government and its employee when he is sent on deputation and he virtually remains under the effective control of the State Government.

7. The facts disclose that the Intelligence Bureau was reorganised and in the Resolution dated 03.11.1990 it was stated that this was done with a view to make the State CID (Intelligence Bureau) more effective and officer-oriented and also with a view to give incentives to the staff working in the State CID (I.B.). The posts

were therefore redesignated at various levels as stated in the Resolution. The post of PI was redesignated as Senior Intelligence Officer, that of PSI as Intelligence Officer and that of Head Constable as Assistant Intelligence Officer. The Resolution shows that there were 100 posts of Senior Intelligence Officer sanctioned against the previous 61 posts, 175 posts of Intelligence Officer against the previous 115 posts and 150 posts of Assistant Intelligence Officer against the previous 299 posts. In paragraph 2 of the Resolution, it was stated that the posts mentioned in the reorganised State CID (Intelligence Bureau) should be filled, in the manner prescribed therein. Accordingly, in paragraph 2(f) it was laid down that if a person willing and found suitable from the common police personnel is posted to the reorganised setup of the State CID (Intelligence Bureau) after granting him one step up promotion, and if such a person becomes eligible for further higher promotion according to his seniority in the parent cadre before completion of three years, he should be considered for further one step up promotion for the remaining period of deputation provided he is willing and found suitable for the higher post. In paragraph 3 of the said Resolution, it was laid down that the promotion given according to paragraph 2 shall be only for the period of service in the State CID (Intelligence Bureau) and will be treated as purely fortuitous when the officer reverts to his parent cadre. In context of the Resolution dated 3rd November, 1990, a further Resolution was passed on 30th November, 1990 giving a further benefit of rent-free accommodation to the police personnel deputed to the State CID (Intelligence Bureau). It will be noted that in the said Resolution, there is a clear reference to the police personnel deputed under the Resolution dated 3rd November, 1990. Thus, from the Resolution dated 3rd November, 1990 as well as the subsequent Resolution, it is clear that the posts in the reorganised State CID (Intelligence Bureau) were to be filled in, inter alia, by drafting persons from the police force on deputation basis, as contemplated in paragraph 2(e) and paragraph 3 of the Resolution. It was clearly stipulated that even if a promotion was earned in the parent cadre before the completion of three years, that would be considered for further one step-up promotion in the CID only for the remaining period of deputation. It becomes at once clear from these provisions that the lien of these employees who were deputed to the CID (Intelligence Bureau) was maintained in the parent cadre and that under the Scheme of filling in the posts under the reorganised State CID (Intelligence Bureau) set-up, these persons were to be drawn only on deputation basis and were required to be

repatriated to their parent cadre.

8. Under Section 3 of the Bombay Police Act, as applicable to the State of Gujarat, it is provided that there shall be one police force for the whole of the State of Gujarat. Under Section 5, the police force shall consist of such number in the several ranks and have such organisation and such powers, functions and duties as the State Government may, by general or special order, determine. Chapter II of the Gujarat Police Manual (Volume I) deals with the recruitment, appointment, probation, confirmation and seniority. Chapter IV deals with suspension and transfers. Under Paragraph 153 of the Manual, there is a provision for effecting transfers and it is provided in sub-paragraph 3 that the Range Deputy Inspector General may transfer within the range, police force of and below the rank of Inspector, Assistant Public Prosecutors and Ministerial Staff, the approval of the Deputy Inspector General of Police, Criminal Investigation Department (Intelligence) being necessary in the case of Sub-Inspectors serving in the local Intelligence Branch and of Inspector General of Police in the case of Sub-Inspectors in the local Crime Branch. Moreover, under Rule 17 of the BCSR which is also applicable to the members of the police force as per the note below Rule 2, a government servant may be employed in any manner required by the proper authority, whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund of India or of a State or from the revenues of a local fund or from the fund of a body incorporated or not which is wholly or substantially owned or controlled by the Government. Therefore, a member of the police force could always be sent on deputation to the other cadre by virtue of the powers of the competent authority to transfer him and require him to render services where it is needed. Thus, even in absence of any reference to deputation being made in the recruitment rules appointment on deputation warranted by the above provisions can be made by the competent authority. This, of course, would be subject to the consent of the employee concerned to go on deputation when he is shifted from his parent cadre to any other cadre. It has been held by the Supreme Court in State of Punjab vs. Inder Singh (supra), that deputation amounts to deputing or transferring an employee to a post to another Department on a temporary basis and after the expiry of the period of deputation the employee has to come back to his parent department to occupy the same position unless, in the meantime, he has earned promotion in his parent department as per the Recruitment Rules. It is also

observed that there cannot be deputation without the consent of the person so deputed. Therefore, the essence of deputation is that the person deputed can always be repatriated to his parent cadre.

9. It is evident from the facts brought on record in the affidavits filed on behalf of the Respondents and the orders of appointment of all these employees to the Intelligence Bureau that their postings were made pursuant to the Resolution dated 03.11.1990 in which, as noted above, all of them were to be treated as on deputation and when repatriated their 'one-step' promotion which was given only as an incentive was to be treated as purely fortuitous. It is clear that at no point of time their appointment on deputation was converted into a regular recruitment under the Rules in the Intelligence Bureau. None of them was absorbed in the Intelligence Bureau. There cannot be any absorption in service of the deputationists without issuance of specific orders. It is also evident that the lien of these deputationists was kept in their parent cadres and that their being considered for promotion in the parent cadre, while they were on deputation to the Intelligence Bureau, was also envisaged in paragraph 3 of the Resolution dated 03.11.1990. From the terms and conditions of their appointment to the Intelligence Bureau, it is clear that all of them were only deputationists and were liable to be repatriated to their original posts in the parent cadre. As held by the State of Punjab vs. Inder Singh, (supra), after the expiry period of deputation, an employee has to come back to his parent Department to occupy the same position unless he is, in the meantime, promoted in the parent Department. In paragraph 18 of that judgment, it was held that there was no escape for such employees from going back to their parent Departments and working there as Constables or Head Constables as the case may be. Even in that case, the employees were brought to the CID on deputation for a period of three years but had continued for a number of years. The appellants and the petitioners have, therefore, absolutely no case for continuance in the CID(Intelligence Bureau) and have been lawfully repatriated to their parent cadres.

9.1 It is stated that some of the repatriated staff is being deputed again to the Intelligence Bureau and those who have approached this court are kept out of consideration. The learned counsel appearing f authorities has assured us that there will not be any victimisation on the ground that these employees have approached the court and we do not find any justification

for such apprehensions.

10. All the appeals are therefore dismissed with no order as to costs. All the writ petitions are also rejected and Rule is discharged in each of them with no order as to costs.

(R.K. ABICHANDANI, J.)

(D.H. WAGHELA, J.)

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